

# Minute of Meeting

Planning Committee  
Tuesday 10 January 2023  
Item No: 4.1



## Planning Committee

| Date                     | Time    | Venue            |
|--------------------------|---------|------------------|
| Tuesday 22 November 2022 | 1.00 pm | Council Chambers |

### Present:

|                          |                      |
|--------------------------|----------------------|
| Councillor Imrie (Chair) | Councillor Alexander |
| Councillor Bowen         | Councillor Cassidy   |
| Councillor Drummond      | Councillor McCall    |
| Councillor McKenzie      | Councillor McManus   |
| Councillor Milligan      | Councillor Parry     |
| Councillor Russell       | Councillor Scott     |
| Councillor Small         | Councillor Virgo     |
| Councillor Winchester    |                      |

### In Attendance:

|                  |   |
|------------------|---|
| Peter Arnsdorf   | Planning, Sustainable Growth and Investment Manager |
| Janet Ritchie    | Democratic Services Officer                         |
| Andrew Henderson | Democratic Services Officer                         |

## 1. Apologies

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Apologies for absence were received from Councillor Curran, Councillor McEwan and Councillor Pottinger

## 2. Order of Business

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The order of business was as set out in the Agenda.

## 3. Declarations of interest

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Councillor Scott declared an interest with regards to item 5.3 advising that she had knowledge of the person and would take no part in the discussion also declared an interest with regards to 5.4 that she had objected to a similar application in 2017 therefore would take no part in this discussion and would leave the meeting for both these items..

Councillor Smaill also declared an interest with regards to Item 5.3 as he knew the Owner and would not take part in this discussion.

Councillor McCall required clarification if she could take part in the Item 5.4 which had been continued from the last meeting as she had not been present at that meeting. It was confirmed that there was no reason she could not take part as further information had been included and this Item was being considered again today.

## 4. Minutes of Previous Meetings

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The minute of the meeting of 11 October 2022 was submitted and approved as a correct record subject to the following amendments:

With regards to Item 5.3 Councillor Scott highlighted that Gorebridge Community Council raised serious concerns that the Reporter's decision highlighted education infrastructure as a barrier to house building and that education capacity constraints are presented as insurmountable constraint to any further housing developments in Gorebridge.

With regards to Item 5.4 Councillor Smaill highlighted with this report being continued to the next meeting of the Planning Committee, the Developer would have a right to Appeal to the Reporter on the grounds of non-determination.

## 5. Reports

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| Agenda No   | Report Title            | Submitted by:       |
|---|-------------------------|---------------------|
| 5.1   | Housing Land Audit 2022 | Chief Officer Place |
| Outline of report and summary of discussion   |                         |                     |
| The purpose of this report is to present the 2022 Housing Land Audit (HLA) and to update the Committee on the state of the housing land supply in Midlothian. |                         |                     |

A copy of the 2022 HLA is attached as Appendix A. Its 'Summary' schedule identifies a remaining established supply of 11,966 units as of 31 March 2022. This is the sum of the remaining capacity of all sites known to Midlothian Council, whether allocated through development plans or granted planning permission. Of these, 11,276 units are effective and 690 are constrained. Further commentary on the general status of the housing land supply is provided in the Audit's 'Housing Supply Summary' section and plans showing the sites is attached as Appendix B.

The Planning, Sustainable Growth and Investment Manager in responding to various questions regarding reviewing some of the sites allocated in older plans confirmed that when the Council prepare the next local development plan the Council will have the opportunity to re-allocate sites but highlighted this does not apply to sites which have planning permission and also provided clarity on the sites with planning permission and the time period for implementation. He also confirmed he would circulate a list of sites which did not have planning permission to Elected Members.

In response to further questions Officers provided clarity on technology and lighting within developments and advised that within the constraints of legislations this will be restrictive but will be addressed when preparing the next Local Development Plan.

During further discussion the Planning, Sustainable Growth and Investment Manager and the Chair provided clarity with regards to site allocations and housing targets, infrastructure and developer's contributions and the factors considered when building houses.

Following a comment the Planning Sustainable Growth and Investment Manager confirmed that for future reports he would ensure better clarity with regards to the figures contained within the report.

#### Decision

The Planning Committee:

- a) Noted the 2022 Housing Land Audit for Midlothian and agreed to its publication; and
- b) Instructed the Planning, Sustainable Growth and Investment Manager to provide a further update when NPF4 is adopted and new housing targets are set for Midlothian.

#### Action

The Planning, Sustainable Growth and Investment Manager

| Agenda No   | Report Title   | Submitted by:       |
|---|--|---------------------|
| 5.2   | Non Compliance with Section 179 Notice at Land 25m West of Lugton Brae | Chief Officer Place |
| <b>Outline of report and summary of discussion</b>  |  |                     |
| <p>This report relates to the non-compliance with the requirements of a notice served by the Council under Section 179 (land adversely affecting amenity of a neighbourhood) of the Town and Country Planning (Scotland) Act 1997 as amended, on land 25m west of Lugton Brae (the former Lugton Inn site), Old Dalkeith Road, Dalkeith. The Section 179 (S179) notice required the owner of the land to remove waste and debris and to remove, replace and reinstate both collapsed and damaged sections of heras fencing at the site. The notice was served on 31 March 2022 and has not been the subject of an appeal, nor has it been complied with.</p> <p>This report recommends that the Committee provides authorisation to take 'Direct Action' to remedy the noncompliance with the S179 notice requirements. This is namely; to engage contractors to clear the deposited waste and debris and to reinstate the heras fencing and then charge the owner of the land the costs and expenses for doing so.</p> <p>Councillors welcomed this paper and commented that this was a long standing issue and following various questions the Planning, Sustainable Growth and Investment Manager confirmed the next steps if the owner failed to comply with the S179 notice.</p> |  |                     |
| <b>Decision</b>   |  |                     |
| <p>The Planning Committee:</p> <ul style="list-style-type: none"> <li>a) Noted the contents of this report; and</li> <li>b) Instructed Council Officers to take Direct Action to remedy the outstanding S179 notice requirements and recover the associated costs (an estimated £3,000).</li> </ul>   |  |                     |
| <b>Action</b>   |  |                     |
| The Planning, Sustainable Growth and Investment Manager   |  |                     |

**Councillor Smail having declared a non-pecuniary interest in the following item of business left the meeting at 1.37 pm.**

**Councillor Scott having declared a non-pecuniary interest in the following two items of business left the meeting at 1.37 pm**

| Agenda No   | Report Title  | Submitted by:       |
|---|---|---------------------|
| 5.3   | Enforcement Notice Appeal Decision with regard to the change of use of vacant land to Builders' Yard North of 6 Ashbank, Gorebridge | Chief Officer Place |
| Outline of report and summary of discussion   |   |                     |
| <p>The purpose of this report was to advise the Committee of an enforcement notice appeal decision with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.</p> <p>A retrospective planning application for the change of use of vacant land to a builders' yard (sui generis) at land north of 6 Ashbank, Gorebridge was refused 19 October 2021 and a subsequent notice of review was dismissed by the Local Review Body (LRB) at its meeting of 21 March 2022.</p> <p>Despite the refusal of planning permission and the LRB decision to dismiss the review the site operator (and owner) continued to operate and as such an enforcement notice was issued 30 June 2022, with a take effect date of 31 July 2022 and a three month compliance period. The site operator appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. As a consequence of the appeal the compliance period is extended to 7 January 2023 (three months after the appeal decision).</p> |   |                     |
| <b>Decision</b>   |   |                     |
| The Planning Committee noted the enforcement notice appeal decision with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.  |   |                     |
| <b>Action</b>   |   |                     |
| The Planning, Sustainable Growth and Investment Manager   |   |                     |

**Councillor Smail re-joined the meeting at the conclusion of the above item**

| Agenda No  | Report Title   | Submitted by:       |
|--|--|---------------------|
| 5.4  | Application for Planning Permission for the erection of 96 dwellings and associated works on land at Newbyres Site B, River Gorebridge | Chief Officer Place |
| Outline of report and summary of discussion  |  |                     |
| The application was for the erection of 96 dwellings, the formation of access road, car parking, sustainable urban drainage system (SUDS), landscaping and associated works on land at Newbyres Site B, River Gore Road, Gorebridge. |  |                     |

There had been 71 representations (69 objections and two in support) and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), Scottish Water, Network Rail, the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Policy and Road Safety Manager, the Council's Flooding Officer, the Council's Education Resource Manager, the Council's Land Resources Manager and the Council's Senior Manager Protective Services.

At its meeting of 11 October 2022 the Committee deferred consideration of the application to enable additional clarity to be provided on education matters – additional information is provided in the Education comments set out in paragraphs 5.9 – 5.12 of the report. In response to the deferral the applicant has provided a benefits statement reaffirming their commitment to the site and highlighting the employment opportunities the site offers locally, a copy of the statement is set out in paragraph 3.6 of the report.

The Planning, Sustainable Growth and Investment Manager's in presenting this report advised that following the publication of the Agenda SEPA has withdrawn their holding objection therefore point b. of the recommendations is no longer required, he also highlighted that an objection had been received from Gorebridge Community Council and that this was circulated to the committee prior to this meeting.

Thereafter the Planning and Sustainable Growth and Investment Manager responded to questions and comments from Elected Members in particular regarding the access road and the Education provision. He also provided clarity on the timeline for this development and that he could see no other alternative access to this site. He confirmed that he would take away the concerns regarding construction vehicles and the safety of children and residents and also that with regards to HGVs that there is appropriate access. He further advised that if this is approved with regards to condition 15 this can be worded appropriately to address all the concerns raised.

It was noted there should be a pre-inspection and a post-inspection to ensure all issues are addressed appropriately.

Following further discussion and comments regarding the letter of objection received from Gorebridge Community Council, issues were raised regarding Developer's not providing access within suitable timescales and the Planning, Sustainable Growth and Investment Manager confirmed that the Council in managing the development, in particular this site they can proactively monitor the conditions to make sure any issues are picked up.

It was also highlighted that most of the objections had been addressed by the Planning, Sustainable Growth and Investment Manager and among other reasons this site was in good proximity to public transport and it would not be in the Council's best interest to turn this application down.

Councillor McCall, seconded by Councillor Drummond moved to reject the application on the grounds of over development and the lack of infrastructure.

Councillor Virgo, seconded by Councillor Winchester moved the report with the amendments to the conditions as discussed.

The Chair advised with the amendments discussed and this being part of the local plan he approved the development and thereafter a vote was taken 5 voted for the motion to reject the application and 8 voted for the report as amended this then became the decision of the Committee.

#### Decision

The Planning Committee agreed to grant planning permission for the following reasons:

*The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.*

Subject to the conditions as set out in the report with Condition 15 amended to reflect the discussion and concerns raised at this meeting.

#### Action

The Planning, Sustainable Growth and Investment Manager

### **Councillor Scott re-joined the meeting at the conclusion of the above items**

| Agenda No | Report Title   | Submitted by:       |
|-----------|--|---------------------|
| 5.5       | Application for Planning Permission for erection of foodstore (Class 1) and associated works 18-20 Edinburgh Road, Penicuik(22/002736/DPP) | Chief Officer Place |

#### Outline of report and summary of discussion

The application was for the erection of a retail foodstore (class 1), fencing, electric vehicle charging points, bin shelter and trolley bays; formation of access, car parking and associated works at the site of a former car salesroom at 18-20 Edinburgh Road, Penicuik which was subject to a site visit on Monday 21 November 2022.

There have been three representations (all supporting) and consultation responses from Scottish Water, the Council's Senior Manager Neighbourhood Services (Roads), the Council's Flooding Officer and the Council's Senior Manager Protective Services.

The Planning, Sustainable Growth and Investment Manager presented this report highlighting the main sections contained within the Report.

The Chair highlighted as this was subject to a call-in by Councillor McCall invited Councillor McCall to speak. In response to Councillor McCall's questions regarding the reason this application did not impact on the Town Centre and also concerns regarding road safety, the Planning, Sustainable Growth and Investment Manager provided clarity on the previous applications which had been refused and that they were for smaller mixed units which could be accommodated in the Town Centre whereas this was different in terms of the size and could not be accommodated in the Town Centre. Also with regards to road safety he highlighted that as the site used to be a car showroom and with other businesses in this area there was local awareness of trade vehicles. Following further concerns raised regarding the access and exit from the site he provided clarity on measures which could be put in place to alleviate some of the concerns and also provided the agreed times when deliveries would take place and the stores opening times.

Councillor McCall, seconded by Councillor McManus moved to grant planning permission and with no objections received this became the decision of the Committee.

#### Decision

The Planning Committee agreed to grant planning permission for the following reason:

*The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.*

Subject to the conditions as set out in the report.

#### Action

The Planning, Sustainable Growth and Investment Manager

### Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 13 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973:-

| Agenda No   | Report Title                            | Submitted by:       |
|---|---|---------------------|
| 6.1   | Tree Preservation Order (TPO) - Bilston | Chief Officer Place |
| Decision  |   |                     |
| The Committee agreed the recommendations as detailed in the Report.         |   |                     |
| Action  |   |                     |
| The Planning, Sustainable Growth and Investment Manager/Democratic Services |   |                     |

## **6. Date of Next Meeting**

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The next meeting will be held on Tuesday 10 January 2023 at 1.00pm

The meeting terminated at 2.29 pm